

Administrative Conference of the United States

MINUTES OF THE TENTH MEETING OF THE COUNCIL

June 20, 1962

Council

E. Barrett Prettyman, *Chairman*
Max D. Paglin, *Vice Chairman*
Manuel F. Cohen
Walter Gellhorn
Joseph P. Healey
Everett Hutchinson
James M. Landis
John D. Lane
Earl Latham
Carl McGowan
Nathaniel L. Nathanson

Administrative Conference of the United States

Executive Secretary, WEBSTER P. MAXSON
Director, Office of Administrative Procedure
Department of Justice, Washington 25, D.C.

Summary of Principal Actions Taken at the Tenth Meeting of the Council June 20, 1962

1. The Council, having referred (at its ninth meeting on May 14, 1962) Recommendation No. 14 concerning the licensing of truck operations to the Conference for discussion and vote at its June 29, 1962 plenary session, in addition referred the following recommendations for consideration at that meeting:

(a) Recommendation No. 15, on the right to counsel in administrative proceedings;

(b) Recommendation No. 16, on ex parte communications to administrative agencies; and

(c) Recommendation No. 17, on statistics concerning agency proceedings.

2. Approved the substitution of Messrs. Smith and Rains for Messrs. Knight and Carlock as the Treasury Department designees as members of the Conference.

3. Approved the substitution of Mr. Kingsley for Mr. Graham as the Atomic Energy Commission designee as a member of the Conference.

4. Approved the request of the Committee on Personnel for authority to make expenditures for services of consultants in connection with a study of further training of professional personnel in the Federal Government.

5. Approved the request of the Committee on Information and Education for authority to fill the vacancy caused by the resignation of one of its student-assistants.

6. Agreed to propose to the Conference that its plenary session on June 29, 1962 impose the customary limits on debate.

MINUTES OF THE TENTH MEETING OF THE COUNCIL OF
THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES
UNITED STATES COURT HOUSE, WASHINGTON, D. C.

Wednesday, June 20, 1962

MEMBERS OF THE COUNCIL

Judge E. Barrett Prettyman,
Chairman
Mr. Max D. Paglin,
Vice Chairman
Mr. Manuel F. Cohen
Professor Walter Gellhorn
Mr. Joseph P. Healey
Mr. Everett Hutchinson
Mr. James M. Landis
Mr. John D. Lane
Professor Earl Latham
Mr. Carl McGowan
Professor Nathaniel L. Nathanson

Mr. Webster P. Maxson,
Executive Secretary

Vice Chairman Max D. Paglin called the meeting to order at 2:00 p.m. Members present, in addition to Mr. Paglin, were Professor Gellhorn, Commissioner Hutchinson, and Professor Nathanson. Also present were Professor Carl Auerbach, Staff Director, Committee on Internal Organization and Procedure, Mr. David Ferber, Chairman of the Committee on Internal Organization and Procedure, and Professor Robert B. McKay, Staff Director, Committee on Compliance and Enforcement Proceedings.

Mr. Paglin announced that the Committee on Licensing had accepted the Council's amendments to its recommendations and report on licensing of truck operations by ICC and thus they were ready for Conference action.

Mr. Paglin submitted to the Council the recommendations and report of the Committee on Compliance and Enforcement Proceedings relative to the right to counsel before administrative agencies.

Professor Gellhorn suggested that the recommendations more clearly reflect the Committee's position relative to counsel representing both a witness and respondent before an agency. After discussion, the Council agreed to the following footnote to Recommendation No. 3, prepared by Professor McKay:

"'Qualified counsel of his choice,' as used throughout this recommendation, is not intended to foreclose agency determination, by appropriate rule, of the qualifications required of counsel to practice before the agency, or to foreclose agency adoption of special rules authorizing disqualification of counsel from representing more than one person in the same proceeding or investigation."

The Council agreed to refer the recommendations, as amended, and report to the Conference.

Mr. Paglin submitted to the Council the recommendations and report of the Committee on Internal Organization and Procedure relative to ex parte communications.

Upon the suggestion of Professor Nathanson, the Council agreed to delete paragraph 1h of the recommendations.

Professor Gellhorn suggested and the Council agreed to amend paragraph 1c(2) of the recommendations to read:

"(2) Any oral communication of any kind about an on-the-record proceeding (i) if advance notice that it will be made is not given by the communicator to all the parties to the proceeding or (ii) if its contents are not disclosed by the communicator to all the parties at the time of its

presentation or promptly thereafter, in accordance with agency rules. Each agency should promulgate rules specifying the manner and time of disclosure."

Mr. Ferber, at the suggestion of Professor Gellhorn, agreed to make various background statements relative to certain materials in the report.

The Council discussed the question of the advisability of submitting the recommendations and report to the Conference on June 29, 1962 only "for information" and preliminary discussion with action thereon to be delayed until the October 1962 meeting. The Council agreed to refer the recommendations, as amended, and report to the Conference for action at its June 29, 1962 plenary session.

Mr. Paglin submitted to the Council the recommendation and report of the Committee on Statistics and Reports. The Council agreed to refer them to the Conference.

Mr. Paglin submitted to the Council the recommendation and report of the Committee on Information and Education relative to electronic retrieval of legal data and to a lawyer exchange program. The Council agreed to defer consideration of these matters until more information concerning them was submitted by the Committee.

Mr. Paglin submitted the proposal of the Committee on Information and Education to conduct a seminar on the work of the Conference at the 1962 annual meeting of the American Bar Association. The Council approved the proposal.

The Council approved the substitution of Messrs. Smith and Rains for Messrs. Knight and Carlock as Treasury Department designees as members of the Conference.

The Council approved the substitution of Mr. Kingsley for Mr. Graham as the Atomic Energy Commission designee as a member of the Conference.

The Council approved the request of the Committee on Personnel for authority to make expenditures for services of consultants in connection with a study of further training of professional personnel in the Federal Government.

The Council authorized the Committee on Information and Education to fill the vacancy caused by the resignation of one of its student-assistants.

The Council agreed to propose to the Conference that its plenary session on June 29, 1962 impose the customary limits on debate.

The Council adjourned at 4:45 p.m.

